

BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
COMMONWEALTH EDISON COMPANY)
)
-vs-)
) No. 13-0469
GRACE BIBLE CHURCH)
)
Complaint regarding unlawful)
establishment of retail service)
accounts by a person that is not)
a retail end-user customer)

Chicago, Illinois
March 18, 2015

Met pursuant to notice at 11:00 a.m.

BEFORE:
CLAUDIA E. SAINSBOT, Administrative Law Judge.

APPEARANCES :

ROONEY RIPPKE & RATNASWAMY LLP, by
MR. CARMEN L. FOSCO
350 West Hubbard Street, Suite 600
Chicago, Illinois 60654-6982
(312) 447-2800

- AND -

KRAUS FLAMING LLC, by
MR. KENNETH E. KRAUS
20 South Clark Street, Suite 2620
Chicago, Illinois 60603
(312) 447-7216

Appearing on behalf of
Commonwealth Edison Company;

1 APPEARANCES CONTINUED:

2 ROWLAND & MOORE LLP, by
3 MR. STEPHEN J. MOORE
4 200 West Superior Street, Suite 400
Chicago, Illinois 60654
(312) 803-1000

5 Appearing on behalf of
6 Grace Bible Center;

7 ILLINOIS COMMERCE COMMISSION, by
8 MR. MATTHEW L. HARVEY
160 North LaSalle Street, Suite C-800
Chicago, Illinois 60601-3104
(312) 793-8185

9 Appearing on behalf of Staff
10 of the Illinois Commerce
11 Commission.

12 SULLIVAN REPORTING COMPANY, by
13 Brad Benjamin, CSR
License No. 084-004805

14
15 I N D E X

16		Re-	Re-	By		
	<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>direct</u>	<u>cross</u>	<u>Examiner</u>
17	NONE.					

18
19 E X H I B I T S

20	<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
21	NONE SO MARKED		
22	OR ADMITTED.		

1 JUDGE SAINSOT: By the authority vested in me
2 by the Illinois Commerce Commission, I now call
3 Docket No. 13-0469. It is the matter of Commonwealth
4 Edison Company versus Grace Bible Center, and it is a
5 Complaint regarding the unlawful establishment of
6 retail service accounts by a person that is not a
7 retail end-user customer.

8 Will the parties identify themselves
9 for the record, please.

10 MR. FOSCO: Appearing on behalf of Commonwealth
11 Edison Company, Carmen L. Fosco with the law firm of
12 Rooney Rippie & Ratnaswamy LLP, 350 West Hubbard
13 Street, Suite 600, Chicago, Illinois 60654.

14 And also appearing for Commonwealth
15 Edison Company, Kenneth E. Kraus with KrausFlaming
16 LLC, 20 South Clark Street, Suite 2620, Chicago,
17 Illinois 60603.

18 MR. MOORE: Appearing on behalf of Grace Bible
19 Center, Stephen Moore of the law firm of Rowland &
20 Moore LLP, 200 West Superior Street, Suite 400,
21 Chicago, Illinois 60654.

22 MR HARVEY: For the Staff of the Illinois

1 Commerce Commission, Matthew L. Harvey, 160 North
2 LaSalle Street, Suite C-800, Chicago, Illinois 60601.

3 JUDGE SAINSOT: Counsel, would you like to
4 proceed?

5 MR. MOORE: Yes, your Honor.

6 Just in response to ComEd's reply and
7 their Motion for Sanctions, I just want to point out
8 that Grace Bible Center is offering up something.
9 ComEd conducted a discovery deposition, and we are
10 willing to allow that deposition to be considered
11 evidence and attach it to our response. And, you
12 know, the words of Ms. Bell will be considered
13 evidence rather than just a deposition that ComEd
14 would have to introduce using other techniques of
15 trial.

16 And I'd also point out that we also
17 concede that if Pastor Simmons is unable to be
18 deposed, we will not be able to use him as a witness
19 in this proceeding.

20 JUDGE SAINSOT: How long has he been gone?

21 MR. MOORE: Since -- my understanding is
22 January of 2014. And I checked with Ms. Bell

1 yesterday and he still is --

2 JUDGE SAINSOT: Well, he was unavailable way

3 before -- oh, no, since January of 2014.

4 MR. MOORE: '14, yes. A year and --

5 JUDGE SAINSOT: Right.

6 MR. MOORE: -- a month -- two months.

7 JUDGE SAINSOT: Yeah.

8 MR. MOORE: And no one at Grace Bible Center

9 knows where he is or when he's coming back.

10 JUDGE SAINSOT: That's a long time for a

11 sabbatical.

12 MR. MOORE: I -- I don't know what else to say,

13 your Honor. And they understand it's hurting their

14 case.

15 MR. FOSCO: Your Honor, then I guess, in a

16 brief reply, I mean, the --

17 JUDGE SAINSOT: Hold on just a second.

18 Just for the record, they are

19 observing. Okay?

20 Mr. Fosco?

21 MR. FOSCO: Thank you, your Honor.

22 Just for the record, I understand

1 Mr. Moore's point that we would have to go through
2 some procedural steps, but substantively offering up
3 the deposition transcript is still, we believe, not
4 an appropriate sanction. We have had fair and
5 reasonable inferences from the testimony, and we
6 think our requested admissions are appropriate.

7 JUDGE SAINSOT: What would be the difference
8 between using the deposition and the admissions?

9 MR. MOORE: The deposition has context and also
10 different wording. You know, to be honest, most of
11 their inferences were probably fair inferences, and
12 ComEd could easily argue those in their brief and
13 pleading and I'd have difficulty opposing it.

14 But, you know, things like -- I think
15 one of them was, they use the word, "concealed," you
16 know, the identity of the people that were residing
17 there. You know, it's not a word Ms. Bell used, it's
18 a word that has a more voluntary, you know, almost
19 improper connotation to it. And that's not something
20 she used. And I'd rather her words describing the
21 process rather than ComEd's inferences.

22 JUDGE SAINSOT: All right.

1 MR. MOORE: Which they can argue if they want.

2 JUDGE SAINSOT: All right. Before I make any

3 ruling as to what to do with the deposition, I need

4 the whole deposition.

5 MR. FOSCO: Okay (tendering.)

6 JUDGE SAINSOT: You're going to give me time to

7 read it, right?

8 MR. FOSCO: Yes, your Honor.

9 JUDGE SAINSOT: How about I -- is this your

10 only copy?

11 MR. KRAUS: No. No. You can have that, your

12 Honor. That's an entire copy of her deposition.

13 JUDGE SAINSOT: Be careful what you wish for.

14 It's pretty thick.

15 MR. FOSCO: And, your Honor, I suppose we can

16 provide a copy to Mr. Moore at some point since your

17 Honor requested that.

18 MR. KRAUS: Yeah, I did.

19 MR. FOSCO: We don't have --

20 MR. KRAUS: That's fine.

21 Your Honor, this is Ken Kraus on

22 behalf of ComEd. Just, I want to point out that I

1 don't think the deposition transcript is the, sort
2 of, only basis for deciding what the sanctions should
3 be. I mean, it's the only evidence we have from a
4 witness.

5 But what Grace Bible is saying here is
6 the fact that the main guy who designed this
7 program -- the consequence for him not appearing at
8 all in response to this Deposition Notice or the
9 Court's Order, is just that essentially we're stuck
10 with what a part-time administrator had to say, and
11 she obviously doesn't have all the knowledge. There
12 were several points at which she said, You need to
13 talk to the pastor. Well, we want to talk to him,
14 but he's not available. So...

15 And, you know, Illinois law says you
16 get adverse inferences when a party refuses to
17 produce key evidence. And these are very limited
18 adverse inferences. They're very reasonable and
19 logical, flowing from what she said. Not that we had
20 to base it on that in the first place at all, but we
21 did.

22 So I think what we're asking for is

1 justified and very reasonable, and I don't see why it
2 has to somehow tie closely to the words that she
3 used. I mean, when you're talking about the conceal
4 point, what she said was when she calls up ComEd, she
5 does not tell them that she is trying to get service
6 started for some unnamed participant. She
7 said -- that's what she said.

8 And she also said that when she calls
9 up ComEd to open up an account, she doesn't tell them
10 that this person she's not going to mention also has
11 a past due balance with ComEd. That's how the
12 program works.

13 All we're saying is if your program
14 works that you're not going to tell us who the real
15 end-user is and you're not going to tell us that the
16 end-user already owes ComEd a debt, that's concealing
17 those facts. Because you ought to know that's
18 important to ComEd, and you do know that.

19 Now, those are the kinds of things we
20 wanted to ask Pastor Simmons, but he's not here. So
21 we think it's completely reasonable to say -- as the
22 law says, the inference is it would have been an

1 adverse inference against you. This is one of those
2 times, that's the inference that we think is
3 justified.

4 JUDGE SAINSOT: Any rebuttal?

5 MR. MOORE: Your Honor, I mean, Ms. Bell is,
6 you know, not just the part-time administrator, she's
7 been running the program. She's the one that's been
8 making the calls. And when she talked about what the
9 process was, it was her process.

10 And ComEd's complaint is about what is
11 Grace Bible Center currently doing, not what it did
12 when it first set up the program with Pastor Simmons.
13 And, you know, its complaint, if you -- you know, I
14 would urge you to read the Complaint, which is pretty
15 narrowly focused -- that's saying they're doing
16 something that, you know, is against our tariffs.
17 And Ms. Bell is capable of telling what they are
18 currently doing.

19 JUDGE SAINSOT: I just have a few questions
20 because I want to step back from this situation for a
21 minute.

22 What's going on with the program

1 participants now?

2 MR. MOORE: They are -- it is slowly losing
3 participants because no new participants have been
4 allowed since this case began. So it had -- they've
5 been -- the existing ones were grandfathered in, and
6 as they leave the program, they're not being
7 replaced. I don't know the exact number of what is
8 left at this point, but it's a much smaller program.

9 JUDGE SAINSOT: Is there any reason why you
10 can't look at the records as they are now? Would
11 that help you? I mean, it's your case.

12 MR. FOSCO: Your Honor -- I mean, we've looked
13 at the records, but they're limited and part of them
14 has been lost.

15 JUDGE SAINSOT: Right. Right. I mean, that's
16 why I say as they are now, because the records went
17 missing just like with Pastor Simmons.

18 MR. KRAUS: We can look at the records, your
19 Honor, and probably determine how many people are
20 still in the program.

21 JUDGE SAINSOT: Uh-huh.

22 MR. KRAUS: But the issue is not really the

1 extent of the program, it's the instance of it and
2 the tactics that are used -- were used to get these
3 people service when they had been shut off for
4 nonpayment.

5 JUDGE SAINSOT: Well, that's why I asked.
6 Because I'm not really sure what -- I mean, let's be
7 honest. This is a very different kind of situation.
8 I mean, normally in a situation with sanctions
9 it -- the case is about money. This case is
10 obviously not about money, it's about the program.
11 And so I want to make sure ultimately that whatever
12 sanction, you know, I impose fits properly.

13 So what I'd like to do is give you one
14 more chance, for the record, to find Pastor Simmons.
15 Somebody knows where he is. I'm going to give you 30
16 days and if we come back and then Pastor Simmons
17 hasn't appeared, then I will no longer be taking your
18 Motion for Sanctions against Grace Bible under
19 advisement, but I will rule on it. I just don't want
20 to be sanctioning right this moment.

21 So you get one more chance. Status
22 hearing in 30 days.

1 What works for your schedule?

2 MR HARVEY: That's the week of the 13th, your
3 Honor?

4 JUDGE SAINSOT: Let's not do it on the 13th;
5 it's unlucky.

6 MR. HARVEY: Monday --

7 MR. MOORE: That's a bad week for me.

8 JUDGE SAINSOT: That's a Monday? How about
9 April 16th at 11:00? Does that work?

10 MR. FOSCO: That works for me.

11 Does it work for you?

12 MR. KRAUS: Yeah.

13 MR. MOORE: I need to be somewhere at noon.

14 Can we do it at 10:30?

15 JUDGE SAINSOT: Sure.

16 MR. MOORE: Be safer.

17 JUDGE SAINSOT: 10:30.

18 And just for the record, I -- so
19 record's clear, I am taking this Motion for Sanctions
20 against Grace Bible Center under advisement, but if
21 Pastor Simmons isn't produced by the April 16th date,
22 then I will rule on it.

1 Okay. Anything I should add/change?

2 MR. MOORE: We had a schedule for briefing. I

3 assume that will be stayed pending that ruling.

4 JUDGE SAINSOT: Right. Good call.

5 Okay. Anything else?

6 Okay. Have a good day. Thank you.

7 (Whereupon the matter was

8 continued to April 16th, 2015,

9 at 10:30 a.m.)

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